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Supreme Court, U.S.
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No. 04-1186

In the Supreme Court of the United States

WACHOVIA BANK, NATIONAL ASSOCIATION,

Petitioner,

v.

DANIEL G. SCHMIDT III, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Respondents *acknowledge* that the circuits are in conflict on the meaning of 12 U.S.C. § 1348; they recognize that the issue is squarely presented in this case; and they do not deny that the question presented here is a recurring one of great practical importance. They are left with no plausible argument against review by this Court and, not surprisingly, have advanced none.

1. Because respondents concede that "the Fourth Circuit disagrees with the analyses of the Fifth and Seventh Circuit Courts of Appeals" (Br. in Opp. 8), they must rest their opposition to the petition on the assertion that "[t]his Court need not be compelled to address every such division simply because the question is one of federal jurisdiction." *Id.* at 6. That may be so, but this case is the paradigm of one in which review by this Court is appropriate.

The conflict in the courts of appeals is ripe for resolution: the arguments on both sides are thoroughly canvassed in scholarly opinions by the majority and dissent below, as well as in the decisions of the Fifth and Seventh Circuits. Moreover, as we showed in the petition (at 7 n.3), the issue has been extensively litigated in district courts across the Nation. And the Office of the Comptroller of the Currency has weighed in several times, elaborating its view that national banks should not be treated as citizens of every state in which they have a branch. See *id.* at 6-7. In these circumstances, there is nothing to be gained – and much to be lost, in the form of wasteful, repetitive, forum-shopping litigation – from delaying resolution of the conflict.

Respondents get no further in asserting that "[n]ational uniformity on this particular issue of diversity jurisdiction is not essential." Br. in Opp. 10. As the volume of reported appellate and district court decisions on the point makes

graphically clear, the issue presented here arises with considerable frequency. And absent a uniform national rule, forum-shopping, inconsistent treatment of identically situated litigants – and, indeed, inconsistent treatment of the *same* litigant in different parts of the country – will be inevitable. For these reasons, this Court has regarded itself as having a special responsibility to assure uniformity and resolve conflicts concerning the jurisdiction of the federal courts. See R. Stern, E. Gressman, S. Shapiro, & K. Geller, SUPREME COURT PRACTICE 252-253 (8th ed. 2002); see also Pet. 10-11 (citing cases in which the Court has granted review to resolve conflicts concerning the rules governing diversity jurisdiction). The Court should take that step here.

2. Respondents also contend that review is unnecessary because Congress could revisit the rules governing the citizenship of national banks. In support of this argument, they assert that the House of Representatives "recently" passed a bill that "shows Congress may specify the location of lending institutions such as national banks for diversity jurisdiction purposes." Br. in Opp. 12. This argument is wrong on two fronts. The cited bill, H.R. 1375, 108th Cong., § 213 (2004), actually passed the House more than a year ago and died at the end of the 108th Congress. And the bill, in any event, had no implications for the current controversy. It concerned the citizenship of federal savings associations, a matter not addressed in any federal legislation; it did *not* address the citizenship of national banks. Legislation affecting the citizenship of national banks was not considered in the last Congress and has not been introduced in the current Congress.

As for the broader suggestion that this Court should not intervene because Congress has the authority to modify federal legislation in response to erroneous statutory decisions by the lower courts, it plainly is without merit. Such an approach would lead this Court *never* to review conflicts in the

courts of appeals concerning the meaning of federal statutes. Needless to say, that has not been the Court's practice.[1]

3. The bulk of respondents' brief is devoted to a lengthy and vigorous defense of the substance of the Fourth Circuit's analysis of Section 1348. Br. in Opp. 15-25. The contentions advanced by respondents are addressed in some detail in the petition (at 11-18) and in Judge King's dissent below (at Pet. App. 34a-46a), and we will not repeat that discussion here. The pertinent point for present purposes is that respondents' contentions relating to the proper interpretation of Section 1348 are immaterial to the decision whether to address the circuit conflict. Each of the arguments now advanced by respondents was considered, addressed, and rejected by the Fifth and Seventh Circuits. Whatever the plausibility of respondents' view of the merits, resolution of the existing conflict in the courts of appeals remains imperative. While respondents' analysis of Section 1348 offers them a healthy head start to their briefing of the merits in the event that the Court grants review, that analysis offers no reason for the Court to deny certiorari.

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

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[1] Respondents likewise get no support from the fact that over a quarter-century ago the Court declined to review the decision of the South Carolina Supreme Court in *Southland Mobile Homes of South Carolina, Inc.* v. *Associates Fin Serv. Co., Inc.*, 244 S.E.2d 212 (S.C.), cert. denied sub nom. *Mellon Bank, N.A.* v. *Southland Mobile Homes of South Carolina, Inc.*, 439 U.S. 900 (1978). The issue presented to the Court in that case concerned the interpretation of 12 U.S.C. § 94 and had nothing to do with federal diversity jurisdiction. See 439 U.S. at 900-903 (Blackmun, J., dissenting from the denial of certiorari). In any event, that decision predated the current conflict in the federal courts about the meaning of Section 1348 by some 25 years.

Respectfully submitted.

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